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Supreme Court of the United States

OCTOBER TERM, 1930

NOS. [redacted] 7 TO 13

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

No. ..... Re Appeal to No. 152 March Term, 1930, in the Supreme Court of Pennsylvania.

No. ..... Re Appeal to No. 154 March Term, 1930, in the Supreme Court of Pennsylvania.

No. ..... Re Appeal to No. 155 March Term, 1930, in the Supreme Court of Pennsylvania.

No. ..... Re Appeal to No. 156 March Term, 1930, in the Supreme Court of Pennsylvania.

HENRY A. PHILLIPS, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

No. ..... Re Appeal to No. 159 March Term, 1930, in the Supreme Court of Pennsylvania.

PIEDMONT COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

No. ..... Re Appeal to No. 160 March Term, 1930, in the Supreme Court of Pennsylvania.

GREENE COUNTY COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

No. ..... Re Appeal to No. 161 March Term, 1930, in the Supreme Court of Pennsylvania.

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, AND BRIEF IN SUPPORT THEREOF.

WILLIAM A. SEIFERT,
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PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, AND BRIEF IN SUPPORT THEREOF.

PETITION FOR WRITS OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Cumberland Coal Company, Piedmont Coal Company, Greene County Coal Company, and Henry A. Phillips, respectfully represents:

Summary Statement of the Matter Involved.

These seven companion cases were tried together in the Court of Common Pleas of Greene County, Pennsylvania, argued together before the Supreme Court of Pennsylvania, and disposed of by that Court in a single opinion and order. Similarly, they are covered here by this single petition and brief.

The question presented is whether the plan of assessment of coal property for taxation pursued by the Commissioners of Greene County, Pennsylvania, sitting as a Board of Revision, is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

The Statutes of Pennsylvania (quoted in the appendix to our brief) provide for the triennial assessment, at its "actual value", of all real estate in each county for purposes of taxation, and constitute the county commissioners of each county a "Board of Revision" to revise, correct, and equalize the valuations of all property returned by the assessors of their county, and to see that all property is "valued at a sum or price not less than the same would bring after full public notice, at a public sale, supposing each separate lot or piece or tract of land, with the improvements, or the personal property of each individual, company or corporation only were to be sold." Upon the valuations so made county taxes are levied throughout each county, and various local taxes are levied by the taxing authorities of each separate township.

When the three Commissioners of Greene County, sitting as a Board of Revision, came to revise and equalize the triennial assessments for 1928, they pursued with respect to the valuation of the Pittsburgh or River vein

of coal the following plan: They assessed all the Pittsburgh or River vein of coal underlying the territorial limits of each separate township at the same value per acre* (R. 38 a, 39 a, 55 a; and see map Exhibit B inserted R. 393 a, and Finding 35, R. 444 a), in complete disregard of the admitted fact that, by reason of great differences in distance from river or rail transportation and by reason of other economic factors, the actual or market value of the coal per acre varied throughout each township, and in some instances the Pittsburgh or River vein of coal in one part of a township, belonging to one owner, had an actual or market value of as much as twice that of other coal of the same vein in the same township, belonging to other owners (Finding 14, R. 436 a; Finding 30, R. 441 a; Finding 15, R. 539 a).

From their testimony (R. 251 a, 252 a, 256 a, 264 a, 268 a), it was seemingly the theory of the Board of Revision that they had fulfilled their duty under the law if their assessment of coal per acre was based on the fair *average* value of the coal throughout the township as a whole, and the fact that the more valuable coal in the township belonged to one owner and the less valuable to another owner was of no consequence.

Petitioners' appeals from the assessments to the Court of Common Pleas of Greene County were dismissed (R. 470 a, 519 a, 573 a, 608 a, 646 a, 683 a, 719 a). On November 24, 1930, the Supreme Court of Pennsylvania affirmed the decrees of the court below (R. 184 b) upon the ground that a landowner may not challenge his individual assessment by showing undervaluations of other properties in the taxing district (R. 182 b), and that his sole basis of redress must be that his individual property was assessed at a figure greater than its fair

*Excepting very small acreages surrounding actual operations, which they termed "active coal," and assessed at a uniform higher rate.

market value, or the percentage of such value generally fixed throughout the county (R. 183 b). The conclusion of the Supreme Court of Pennsylvania is concisely stated by it thus (R. 183 b):

> "The fifty per cent. ratio throughout the county having been uniformly fixed and appellants not having shown that their assessments as made are in excess of fifty per cent. of the fair market value of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be."

On December 2, 1930, your petitioners presented to the Supreme Court of Pennsylvania their petition for a reargument (R. 185 b) upon the ground, *inter alia*, that the plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States (R. 202 b); and on December 16, 1930, the Court entered the following order (R. 210 b):

> "And now, December 16, 1930, the order of December 8, 1930, is modified to read as follows: Upon consideration of the petition for reargument, the court being of opinion that the plan of assessment in these cases does not violate the equal protection clause of the fourteenth amendment to the Constitution of the United States, reargument is refused.
>
> PER CURIAM."

Reasons Relied on for the Allowance of the Writs.

1. The plan or method of assessment involved in these cases constitutes a systematic, arbitrary, and intentional discrimination by taxing officials in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. The decision of the Supreme Court of Pennsylvania upholds the violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, to the injury of your petitioners.

3. The decision of the Supreme Court of Pennsylvania that the plan of assessment involved in this case does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, is in conflict with the decision of this Court in *Sioux City Bridge Company v. Dakota County, Nebraska,* 260 U. S. 441, and in other cases cited in petitioners' brief.

4. The question involved is one of very general concern.

Your petitioners, in the brief accompanying this petition, will elaborate upon both the foregoing facts and reasons for the allowance of the writs of certiorari.

WHEREFORE your petitioners respectfully pray that writs of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Pennsylvania, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings

in the above entitled seven cases, and that the said decision and order of the Supreme Court of Pennsylvania may be reversed by this Honorable Court and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

CUMBERLAND COAL COMPANY,
HENRY A. PHILLIPS,
PIEDMONT COAL COMPANY,
GREENE COUNTY COAL COMPANY,

By WILLIAM A. SEIFERT,
Counsel for Petitioner.

SAMUEL MCCLAY,
W. J. KYLE,
CARL E. GLOCK,
ARTHUR B. VAN BUSKIRK,
Of Counsel.

BRIEF IN SUPPORT OF PETITION.

I.

Opinion of the Court Below.

The opinion of the Supreme Court of Pennsylvania in these seven cases has not yet been officially reported. It was handed down November 24, 1930, and will be found on page 180 b *et seq.* of the Record. Supplemental opinion and final order denying a rehearing will be found on page 210 b of the Record.

II.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, c 229, Section 1, 43 Stat. 937.

2. The date of the original decree of the Supreme Court of Pennsylvania was November 24, 1930. A petition for reargument (R. 185 b) was filed in the Supreme Court of Pennsylvania on December 2, 1930; on December 8, 1930, the Supreme Court of Pennsylvania entered an order (R. 210 b) refusing reargument; and on December 16, 1930, a modifying order and supplemental opinion (R. 210 b) refusing reargument was entered.

3. One of the grounds of petitioners' petition for reargument to the Supreme Court of Pennsylvania was that the plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States (R. 202 b); and the final order of the Supreme Court of Pennsylvania (R. 210 b) refuses the reargument upon the ground that in the opinion of the Court the plan of assessment in

these cases does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

4. *Sioux City Bridge Company v. Dakota County, Nebraska,* 260 U. S. 441, is believed to sustain the jurisdiction of this Court to review these cases by *certiorari. Leigh v. Green,* 193 U. S. 79, is believed to sustain the jurisdiction of this Court to consider the federal question, even though not raised until petition for reargument in the Supreme Court of Pennsylvania.

III.

Statement of the Case.

The question presented in these seven cases is whether the plan of assessment of coal property for taxation pursued by the Commissioners of Greene County, Pennsylvania, sitting as a Board of Revision, is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. Although the facts in connection with each of the assessments in the seven cases are necessarily somewhat different from those involved in each of the other assessments, the plan of assessment pursuant to which the Board of Revision made the assessments in question, and against which our complaint is directed, is the same in all of the cases. (See opinion, R. 180 b).

We shall discuss the plan herein with particular reference to Cumberland Coal Company's appeal from its assessment in Cumberland Township, for the reason that in that case the unconstitutionality of the plan of assessment is perhaps more strikingly apparent, and the discrimination more flagrant, than that involved in the other companion cases.

A clear conception of these cases will be aided by examining petitioners' Exhibit B appearing opposite page 393 a of the Record. This exhibit is a map of Greene County, and shows in circles the assessments in each township, and in colors the property of petitioners. The exhibit was found by the trial court to be substantially correct (Finding 35, R. 444 a).

Greene County, Pennsylvania, lies in the southwestern corner of the State, and has as its eastern boundary the Monongahela River. The Pittsburgh or River Vein of coal is a continuous vein of bituminous coal underlying the whole of the County of Greene, and is, for the purposes of these cases, practically of the same character, quality and thickness (Finding 7, R. 434 a). The coal on the river front is, by reason of its proximity to transportation, more valuable than the back coal, and the value of the coal throughout the County decreases as you go west from the Monongahela River and leave the means of transportation (Findings 28, 29, 30, R. 440 a, 441 a).

There is a marked difference in development between that portion of the Pittsburgh or River Vein of coal in Greene County which lies within three miles of the Monongahela River, and that part which lies further back. In the three-mile strip along the river in the various townships, major mining operations have been and are being carried on (Finding 8, R. 434 a; Finding 14, R. 436 a).

Cumberland Township, Greene County, lies along the eastern boundary of the County and extends from the Monongahela River on the east, westwardly a distance of substantially nine miles, as appears by the map, petitioners' Exhibit B. Cumberland Coal Company is the owner of 9237 acres of the Pittsburgh or River Vein of coal in Cumberland Township shown in

yellow on the map, Exhibit B. There is one tract of 132 acres situate in the northeastern part of the Township, and another tract of 203 acres situate in the southeastern part of the Township near the river, about which no complaint is made, so that the appeal of Cumberland Coal Company in Cumberland Township may be considered as dealing only with the remaining 8902 acres. This unopened (R. 59 a) virgin coal extends from a point distant 2¼ miles westwardly from the Monongahela River and runs back to the western line of Cumberland Township, a distance of about nine miles from the river. It does not touch the river at any place, and can be transported only by the construction of new railroads at an expenditure of very large sums of money (Finding 10, R. 434 a, 435 a).

The statutes of Pennsylvania provide for the triennial assessment (see Appendix, section "B"), at its "actual value" (see Appendix, section "C"), of all real estate in each county for purposes of taxation (see Appendix, section "A"), and constitute the County Commissioners of each county a "Board of Revision" to revise, correct and equalize the valuations of all property returned by the assessors of their county, and to see that all property is "valued at a sum or price not less than the same would bring after full public notice, at a public sale, supposing each separate lot or piece or tract of land, with the improvements or the personal property of each individual, company or corporation only were to be sold" (see Appendix, section "D"). Upon the valuations so made county taxes are levied throughout each county and various local taxes are levied by the taxing authorities of each separate township.

When the three Commissioners of Greene County, sitting as a Board of Revision, came to revise and equalize the triennial assessments for 1928, they pursued with respect to the valuation of the Pittsburgh or River

vein of coal the following plan: They assessed all the Pittsburgh or River vein of coal underlying the territorial limits of each separate township at the same value per acre* (R. 38 a, 39 a, 55 a; and see map Exhibit B inserted R. 393 a, and Finding 35, R. 444 a), in complete disregard of the admitted fact that, by reason of great differences in distance from river or rail transportation and by reason of other economic factors, the actual or market value of the coal per acre varied throughout each township, and in some instances the Pittsburgh or River vein of coal in one part of a township, belonging to one owner, had an actual or market value of as much as twice that of other coal of the same vein in the same township, belonging to other owners (Finding 14, R. 436 a; Finding 30, R. 441 a).

Thus in Cumberland Township the Board of Revision valued the Pittsburgh or River vein of coal throughout the entire Township at $260.00 per acre (with the exception of 250 acres or less surrounding actual operations which were uniformly assessed at $500.00 per acre) (Finding 11, R. 435 a) **. This plan was pursued in the face of the following admitted facts found by the trial court:

Finding 14 (R. 436 a):

> "The coal along the Monongahela River on the east of Cumberland Township and for a distance west from the river of approximately three miles, because of its accessibility to market both by river and rail, and because of the fact that it was being actively operated, is worth twice as much as the

*Excepting very small acreages surrounding actual operations, which they termed "active coal," and assessed at a uniform higher rate.

**In so doing the Board purported to assess the coal upon a basis of fifty per cent. of actual value, the ratio generally fixed throughout the County (Findings 18, 20; R. 438a).

balance of the coal in said township from the three mile line to the rear of the township, and nearly all of the coal belonging to the Cumberland Coal Company in Cumberland Township is in that part of the township beginning at a line approximately parallel to the Monongahela River, two and one quarter miles west of the river, and extending west in the township to its boundary, a distance of approximately six miles." (*i. e.,* nine miles from the river)

Finding 30 (R. 441 a):

"The Pittsburgh or River vein of coal of appellant lying a distance of three miles west of the Monongahela River and extending back a distance of three * miles, or six * miles from the river, does not possess a value of more than one-half of the value of the same vein of coal fronting on the Monongahela River, belonging to others than appellant, and extending back a distance of three miles westwardly."

It was seemingly the theory of the Board of Revision that they had fulfilled their duty under the law if their assessment of coal per acre was based on the fair *average* value of the coal throughout each township as a whole, and the fact that the more valuable coal in the township belonged to one owner and the less valuable to another owner was of no consequence. Thus Mr. J. N. Scott, Chairman of the Board, testified (R. 251 a):

"Q. What, in your opinion, is the fair market value of the Pittsburgh or River vein of coal

*This coal of appellant really extends back six miles, or nine miles from the river. (See Finding 10, R. 435a; Finding 14, R. 436a; and map, Exhibit B).

in Cumberland Township per acre at public sale after due and public notice?

"A. Not less than $600.00.

"Q. That testimony of yours extends to the whole township, whether it abuts upon the river or extends eight miles back to the Cumberland Township line?

"A. That is the average of the Township."

(Record p. 256 a):

"Q. Now, Mr. Scott, I am trying to get at what purchasers would want and what would enter their mind in making purchases of coal. You have talked about the average price of $600.00. Will you tell us what the front coal two or three miles extending back and having a frontage of about two miles on the river would be worth?

"A. The front coal might get very valuable. It certainly would not be less than $1,000.00. It would depend on circumstances. By carrying the front at $1,000.00 and the back at $500.00,

It would get an average of $750.00."

Similarly Mr. Paul Debolt, another of the Commissioners being on the stand (R. 264 a):

"Q. What, in your opinion, Mr. Debolt, is the market value of the Pittsburgh or River vein of coal in Cumberland Township at public sale after due public notice?

"A. I think at least $600.00 is the average price."

(Record p. 268 a):

"Q. At the time you were cross-examined by Mr. McClay about the price of the front coal in Cumberland Township, I did not catch what you said—how much an acre it was?

"A. I think that coal in the front should be worth at least $1,000.00 an acre.
"Q. The average of the township $600.00 an acre?
"A. Yes."

In presenting the plan of assessment, as set forth above, we have referred particularly to the situation in Cumberland Township. The same plan was followed in Wayne and Perry Townships, where all the coal was uniformly assessed at $110.00 per acre in Perry Township, and $85.00 per acre in Wayne Township, despite the fact that the Court found (Finding 15, R. 539 a) that the coal in certain portions of each of these Townships was more valuable than the coal in other portions. In Greene Township the coal was all assessed at $225.00 per acre, despite the fact that the evidence shows that the Greene Township coal is worth only about one-half as much as the adjoining coal in Monongahela Township (R. 265 a) which was assessed at only $300.00 per acre.

Petitioners' appeals from the assessments to the Court of Common Pleas of Greene County were dismissed (R. 470 a, 519 a, 573 a, 608 a, 646 a, 683 a, 719 a). On November 24, 1930, the Supreme Court of Pennsylvania affirmed the decrees of the court below (R. 184 b) upon the ground that a landowner may not challenge his individual assessment by showing undervaluations of other properties in the taxing district (R. 182 b), and that his sole basis of redress must be that his individual property was assessed at a figure greater than its fair market value, or the percentage of such value generally fixed throughout the county (R. 183 b). The conclusion of the Supreme Court of Pennsylvania is concisely stated by it thus (R. 183 b):

"The fifty per cent. ratio throughout the county having been uniformly fixed and appellants

not having shown that their assessments as made are in excess of fifty per cent. of the fair market value of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be."

On December 2, 1930, your petitioners presented to the Supreme Court of Pennsylvania their petition for a reargument (R. 185 b) upon the ground, *inter alia*, that the plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States (R. 202 b); and on December 16, 1930, the Court entered the following order (R. 210 b):

"And now, December 16, 1930, the order of December 8, 1930, is modified to read as follows: Upon consideration of the petition for reargument, the court being of opinion that the plan of assessment in these cases does not violate the equal protection clause of the fourteenth amendment to the Constitution of the United States, reargument is refused."

"PER CURIAM."

IV.

Specifications of Error.

1. The Supreme Court of Pennsylvania erred in finding and holding that the plan of assessment involved in these cases does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of Pennsylvania erred in finding and holding that Township Assessors and County Commissioners sitting as a Board of Revision may

assess all bituminous coal in the Pittsburgh or River vein within the territorial limits of a township at the same value, disregarding differences in actual or market values by reason of great differences of distance from river or rail transportation, and other factors entering into values, where it is undisputed that the actual or market value of the coal varies throughout the township, and that the coal fronting on the river and railroads possesses a value twice that of coal lying back from the river and extending to a distance of nine or ten miles.

3. The Supreme Court of Pennsylvania erred in finding and holding that a landowner may not challenge his individual assessment by showing systematic undervaluations of other properties in the taxing district.

4. The Supreme Court of Pennsylvania erred in finding and holding that the sole basis of redress of a landowner must be that his individual property is assessed at a figure greater than its fair market value, or the percentage of such value generally fixed throughout the county.

V.

Summary of Argument.

A. The plan of assessment in these cases involves an arbitrary, intentional and systematic discrimination as between different coal owners.

B. The decision below is contrary to and in conflict with prior decisions of this Court.

VI.

Argument.

POINT A.

THE PLAN OF ASSESSMENT IN THESE CASES INVOLVES AN ARBITRARY, INTENTIONAL AND SYSTEMATIC DISCRIMINATION AS BETWEEN DIFFERENT COAL OWNERS.

In *Sunday Lake Iron Company v. Wakefield Township,* 247 U. S. 350, 352, this Court held that:—

> "The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond v. Chicago Union Traction Co.,* 207 U. S. 20, 35, 37, 52 L. ed. 78, 87, 88, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757."

In these cases the taxing authorities applied a systematic method to the assessment of coal lands throughout the county. The system was to assess all the coal which happened to lie within purely arbitrary township lines at the same value, irrespective of actual value. Thus the taxing authorities assessed the coal throughout Cumberland Township at $260.00 an acre, although they themselves testified that the front coal in the township was worth $1000.00 an acre and the back coal in the township only half as much, and the trial court so

found. The explanation given by the Chairman of the Board was (R. 57 a) "We assessed the coal in the whole township the same because the coal at the back end of the township sold for twice the assessed valuation". Admittedly, then the back coal (of petitioner) was assessed at 50% of true value and the front coal of others at 25% of true value.

Under the circumstances it is difficult to conceive of a more arbitrary method of assessment. Manifestly its effect was to systematically undervalue the coal of the owners in the more valuable sections of the township, and transfer a portion of their lawful tax burden to the owners of the less valuable coal.

We submit that this systematic, arbitrary and intentional discrimination brings the case within the protective scope of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, as defined by this Honorable Court.

Point B.

THE DECISION BELOW IS CONTRARY TO AND IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT.

The decision of the Supreme Court of Pennsylvania appears from the following excerpt from its opinion:

> "Appellants' counsel state their position thus: Township assessors and county commissioners sitting as a board of revision may not assess all bituminous coal in the Pittsburgh or river vein within the territorial limits of a township at the same value, disregarding differences in actual or market values by reason of great differences of distance from the river or rail transportation and other factors entering into values where it is undisputed

that the actual or market value of the coal varies throughout the township and that the coal fronting on the river and railroads possesses a value twice that of the coal lying back from the river and extending to a distance of nine or ten miles. Our answer must be that they may so assess it, and the courts may not alter individual assessments, provided they do not fix the value at a figure in each instance greater than the fair market value of each owner's property, or, as in the cases before us, higher than the percentage or value, here fifty per cent. uniformly fixed throughout the county.

* * * * * * *

"The fifty per cent. ratio throughout the county having been uniformly fixed and appellants not having shown that their assessments as made are in excess of fifty per cent. of the fair market values of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be."

We contend that while a landowner may not attack the assessment in reliance on a few isolated cases of proportionate undervaluations, on the other hand where, as here, the plan of assessment itself necessarily results in the assessment of the same class of property of different owners being made in widely differing proportions of their respective actual values, the Fourteenth Amendment affords protection.

Sioux City Bridge Company v. Dakota County, 260 U. S. 441, was heard by this Court upon writ of certiorari to the Supreme Court of Nebraska. There the portion of petitioners' bridge in Dakota County, Nebraska, was assessed for taxation at its true value, while real estate and improvements generally in the county were assessed at 55% of their selling value.

The Supreme Court of Nebraska held that the remedy of the petitioners was to have the other property which had been assessed below its true value raised rather than to have property assessed at its true value reduced. This Court reversed the judgment of the state court, saying (p. 445):

> "The supreme court does not make it clear whether it thinks the discrimination charged was proved or not, but, assuming the discrimination, it holds that the Bridge Company has no remedy except 'to have the property assessed, below its true value raised, rather than to have property assessed at its true value reduced.' The dilemma presented by a case where one or a few of a class of taxpayers are assessed at 100 per cent of the value of their property, in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage, in violation of the law, has been often dealt with by courts, and there has been a conflict of view as to what should be done. There is no doubt, however, of the view taken of such cases by the Federal courts in the enforcement of the uniformity clauses of state statutes and constitutions, and of the equal protection clause of the 14th Amendment. The exact question was considered at length by the circuit court of appeals of the sixth circuit in the case of *Taylor v. Louisville & N. R. Co.*, 31 C. C. A., 537, 60 U. S. App. 166, 88 Fed. 350, 364, 365, and the language of that court was approved and incorporated in the decision of this court in *Greene v. Louisville & Interurban R. Co.*, 244 U. S., 499, 516-518, 61 L. ed. 1280, 1289, 1290, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88. The conclusion in these and other Federal authorities is that such a result as that reached by the supreme court of Nebraska is

to deny the injured taxpayer any remedy at all, because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of underassessed property in the taxing district. This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. In substance and effect, the decision of the Nebraska supreme Court in this case upholds the violation of the 14th Amendment to the injury of the Bridge Company. We must, therefore, reverse its judgment."

Similarly, in *Southern Railway Company v. Watts,* 260 U. S., 519, 526, this Court said:

"The rule is well settled that a taxpayer, although assessed on not more than full value, may be unlawfully discriminated against by undervaluation of property of the same class, belonging to others. *Raymond v. Chicago Union Traction Co.,* 207 U. S., 20, 52 L. ed. 78, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757. This may be true although the discrimination is practised through the action of different officials. *Greene v. Louisville & I. R. Co.,* 244 U. S., 499, 61 L. ed. 1280, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88. But, unless it is shown that the undervaluation was intentional and systematic, unequal assessment will not be held to violate the equality clause. *Sunday Lake Iron Co. v Wakefield*

Twp., 247 U. S., 350, 353, 62 L. ed. 1154, 1156, 38 Sup. Ct. Rep. 495; *Chicago, B. & Q. R. Co. v. Babcock,* 204 U. S., 585, 51 L. ed. 636, 27 Sup. Ct. Rep. 326; *Coulter v. Louisville & N. R. Co.,* 196 U. S., 599, 49 L. ed. 615, 25 Sup. Ct. Rep. 342; *Sioux City Bridge Co. v. Dakota County,* 260 U. S., 441, 43 Sup. Ct. Rep. 190."

In *Chicago Great Western Railway Company v. Kendall,* 266 U. S., 94, 98, this Court said:

"The averments of both bills make a case of unjust discrimination against complainants' property in that there is an intentional systematic undervaluation by state officials of Iowa of other taxable property of the same class, when the complainants' property is assessed and taxed at a much higher rate. In such cases, the Federal authorities render it clear that the complainants may have the remedy by injunction in equity to prevent the taxation of their property at any higher rate than that imposed upon the property of those in whose favor the discrimination exists. *Cummings v. Merchants' Nat. Bank,* 101 U. S., 153, 160, 25 L. ed. 903, 905; *Greene v. Louisville & I. R. Co.,* 244 U. S., 499, 516, 61 L. ed. 1280, 1289, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88; *Taylor v. Louisville & N. R. Co.,* 31 C. C. A. 537, 60 U. S. App. 166, 88 Fed. 350. See also *Sioux City Bridge Co. v. Dakota County,* 260 U. S., 441, 445, 67 L. ed. 340, 342, 28 A. L. R. 979, 43 Sup. Ct. Rep. 190, and *Sunday Lake Iron Co. v. Wakefield Twp.,* 247 U. S., 350, 352, 62 L. ed. 1154, 1155, 38 Sup. Ct. Rep. 495."

These cases clearly demonstrate that any system of assessment which necessarily subjects one owner to taxation upon a substantially higher proportion of the full value of his property than other owners in the tax-

ing district, is unconstitutional. That such is the situation here is strikingly clear, especially in view of the fact that township, road, and school taxes, which constitute by far the greater part of all taxes on the property, are levied upon the assessments here involved, and in such instances each separate township is the taxing district to which the equal protection clause of the Constitution applies.

The question here involved is one of very general concern to the owners of coal in Pennsylvania. The court found (Finding 24, R. 439 a) that there has been a depreciation in the value of the Pittsburgh coal in the past six years throughout Greene County, and the testimony was that the development of this coal has ceased and the industry is practically at a standstill (R. 94 a, 95 a), and that in the general field coal owners are frequently forced to let their property, or a substantial part of it, be sold for taxes (R. 99 a). The failure of numerous banking institutions and individuals in these districts is a matter of common knowledge. The Supreme Court of Pennsylvania, in its opinion, says that "the proper assessment of coal lands has been one of the most perplexing governmental questions with which the courts of this Commonwealth have had to deal". The economic welfare of thousands upon thousands of people in the bituminous coal fields of Pennsylvania and adjoining states requires that this Honorable Court shall properly restrict the taxing authorities in the pursuance of this unlawful system which has already helped to bring about most distressing consequences.

VII.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the plan of assessment here involved, which threatens to deprive petitioners and great numbers of other coal owners of their constitutional rights, may be presented to this Court for consideration and decision, and that to such an end writs of *certiorari* should be granted in each of the above-entitled seven companion cases, and this Court should review the decision of the Supreme Court of Pennsylvania and finally reverse it.

Respectfully submitted,

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APPENDIX.

A. Real Estate and Personal Property Liable to Taxation for County Purposes.

Act of April 29, 1844, P. L. 486, Section 32, as amended by the *Act of April 28, 1927,* P. L. 491, Section 1. (Pennsylvania Statutes 1928 supplement, sec. 20554):

"Section 32. Be it further enacted, that from and after the passage of this act, all real estate to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries and ferries, wharves and all other real estate not exempt by law from taxation; * * * and *all* salaries and emoluments of office, all offices, and posts of profit, professions, trades and occupations, except the occupation of farmers, together with all other things now taxable by the laws of this Commonwealth, shall be valued and assessed and subject to taxation for the purposes in this act mentioned, and for all county purposes whatsoever."

B. Triennial Assessment.

Act of April 15, 1834, P. L. 509, Sections 1 and 2 (Pennsylvania Statutes 1920, 20579, 20580):

"Section 1. Be it enacted, etc., That the Commissioners of every county, shall at their first meeting after the general election in every year, proceed to make an estimate of the probable expense of the county, for the ensuing year.

"Section 2. Within six weeks after the general election, in the year one thousand eight hundred and thirty-four, and in every third year there-

after, the commissioners of every county shall issue their precept to the assessors of the respective townships, wards and districts, requiring them to make out and return within thirty days thereafter, a just and perfect list, in such form as the commissioners shall direct, of the names of all the taxable persons, residing within their wards, townships and districts, respectively, and of all property taxable by law, together with a just valuation of the same to be made in the manner hereinafter directed.

Act of May 15, 1841, P. L. 393, Section 6 (Pennsylvania Statutes, 1920, sec. 20581):

"Section 6. That within four weeks after the next general election, the commissioners of every county shall issue their precept to the assessors of the respective townships, wards and districts, who shall proceed to make out and return, within sixty days thereafter, a just and perfect list, in such form as the commissioners shall direct, of the names of all the taxable persons residing within their wards, townships and districts, respectively, and of all property taxable by law, together with a just valuation of the same, to be made in the manner heretofore provided for in the previous section of this act, said valuation to continue until the next triennial assessment, at which time the assessment shall be made by the assessors and assistant assessors, as prescribed by the provisions of this act."

Act of April 22, 1846, P. L. 486, Section 16 (Pennsylvania Statutes, 1920, sec. 20582):

"Section 16. That the triennial assessments required under existing laws, shall be made in the several counties, in the year one thousand eight

hundred and forty-six, and triennially thereafter, in the manner prescribed by the acts of assembly regulating the same."

C. Property to Be Assessed at Actual Value.

Act of May 15, 1841, P. L. 393, Section 4 (Pennsylvania Statutes 1920, sec. 20590):

"Section 4. The third and sixth sections of the act entitled 'An act relating to county rates and levies, and township rates and levies,' passed the fifteenth day of April, one thousand eight hundred and thirty four, and all the laws of this Commonwealth which require the assessors of the several townships, wards, and districts, to fix a uniform standard of value, of objects made taxable by law, be and the same are hereby repealed, and from and after the passage of this act, it shall be the duty of the several assessors and assistant assessors, to assess, rate, and value all objects of taxation, whether for state, county, city district, ward, township, or borough purposes, according to the actual value thereof, and at such rates and prices, for which the same would separately bonafide sell, and on the return of such assessment or valuation into the office of the county commissioners, after the same shall have been carefully examined and corrected, it shall be lawful for said commissioners, if they believe any property or thing made taxable, has been assessed and valued below its actual value, to raise the same to the actual value thereof, or if the same has been assessed and valued above its actual value, to reduce the same thereto; *Provided,* That in no case the said commissioners shall impose a different rate per centum, on different townships

in their county, but the same shall be equal throughout, and all rates shall be levied on the assessments as returned and corrected."

D. County Board of Revision; Equalization of Assessments.

Act of July 27, 1842, P. L. 441, Section 10 as mended by the *Act of April 29, 1844,* P. L. 486, Section 1 (Pennsylvania Statutes 1920, section 20615):

"Section 10. The county commissioners shall compose a board to be called 'Board of Revision,' of which the county commissioners holding the oldest certificate of election shall be the president. The members of the said board shall each take and subscribe an oath or affirmation, before the president of the court of common pleas for the county, in the following words, to wit: 'I, ..., do swear or affirm that I will faithfully, and to the best of my knowledge and judgment, revise, correct and equalize the valuation of all property taxable by law, ... in ..... county, ... and faithfully perform all the duties of a member of the board of revision for ..... county according to the laws of this commonwealth, which oath shall be deposited in the office of the recorder for the county.' "

Act of July 27, 1842, P. L. 441, section 13 (Pennsylvania Statutes, 1920, section 20620):

"Section 13. That the board of revision in each county shall, on receiving the returns of the assessors, proceed to examine and inquire whether the same have been made in conformity with the laws of this commonwealth, and whether all property to be valued for taxation for state and county purposes, has been valued at a sum or price not

less than the same would bring after full public notice, at a public sale, supposing each separate lot or piece or tract of land, with the improvements or the personal property of each individual, company or corporation only were to be sold. They shall receive and consider the written communication of any taxable inhabitant of the county, relative to any property which such taxable inhabitant shall believe to have been reduced too low, and on the day appointed for determining whether any property has been reduced too low, or reduce the same if too high, they shall proceed to raise the price or valuation of any property which they shall believe to have been reduced too low, and if they cannot, on the day appointed, revise, raise and equalize, the valuation of all property which they shall believe to have been reduced too low, they may adjourn from day to day until the whole of such valuation shall have been revised, raised and equalized."

Act of July 27, 1842, P. L. 441, section 14 (Pennsylvania Statutes, 1920, section 20621):

"Section 14. That when the whole of the valuation of the assessor shall have been raised, revised and equalized, in conformity with the foregoing section, the same proceedings shall be had in reference to notice, appeals and corrections, which are now had by the laws of this Commonwealth, excepting only that the board of revision, instead of the county commissioners, shall hear and decide upon all appeals."